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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,835	10/30/2003	Merrie Martin	88265-14036	7200
28765	7590	07/26/2005	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 07/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,835

Applicant(s)

MARTIN, MERRIE

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claims 1-3 rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al.

Drantch et al disclose a dough and a method of making fresh baked product from the dough. The dough include brownie doughs. The dough is placed in a sealed container. The dough is prepared into finished baked goods by simple addition to a suitable baking container or pan and baking to form a finished baked good. The dough comprises 25-45% flour, 0-45% sugar, 10-35% fat, and 5-15% moisture. Other ingredients including egg, nonfat dry milk solids, flavoring, preservative and humectant can be added. The fat includes fractionated fat and other fat such as margarine. The dough can contain leavening agent; however, some cookie dough products do not require leavene. The dough is baked at temperature range of 160-218.3 degree C for a time in the range of 10-40 minutes. (see col. 6 lines 56-63, columns 7-9 col. 11 lines 1-25)

With respect to claim 1, Drantch et al do not disclose providing the dough in the form of a bar. They do not disclose the shape and sizes as claimed in claims 2-3.

The dough of Drantch et al does not require any manipulation before baking. Since it is a dough, it is obvious that it has sufficient firmness to retain the shape without breaking. It would have been obvious to one skilled in the art to form the dough into any shape depending on the type of product intended to be made from the dough. For example, brownies are usually formed into bar shape; thus, it would have been obvious to shape the brownie dough into bar shape, or it would have been obvious to shape the dough as oval, round, or any shape to make the dough more attractive and appealing.

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It would also have been obvious to make dough in any thickness, width and length depending on the size wanted for the final product. This would have been an obvious matter of preference.

Claims 4-18,24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al in view of Banks et al.

Drantch et al do not disclose adding emulsifier, cold swelling starch, the dimension of the baking pan and the size of the chocolate chip.

Banks teaches adding a cold water swelling granular starch into cookie dough in an amount of about 2-20%. The starch reduces cookie spread and provides a shelf-stable, more moist and tender texture in cookies. Banks also teaches adding emulsifier to the dough. (see col. 2 lines 35-47, col. 8 lines 62-64).

Drantch et al disclose using margarine which is the same type of fat disclosed. Thus it obvious the fat has the same solid fat index as claimed. It would have been obvious to one skilled in the art to add a cold swelling starch in the amount taught by Banks to obtain the benefits disclosed by Banks. It would also have been obvious to add an emulsifier because it is a known additive for sweet dough product as disclosed by Banks. Adding additive for its art recognized function would have been obvious. It would have been obvious to use pan of any varying size depending on the size wanted for the final product. It would have been obvious to use chocolate chip of any size depending on the taste wanted; this would have been a matter of preference. It would have been obvious to one skilled in the art to form the dough into any shape depending on the type of product intended to be made from the dough. For example, brownies are

usually formed into bar shape; thus, it would have been obvious to shape the brownie dough into bar shape, or it would have been obvious to shape the dough as oval, round, or any shape to make the dough more attractive and appealing. It would also have been obvious to make dough in any thickness, width and length depending on the size wanted for the final product. This would have been an obvious matter of preference.

Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drantch et al in view of Banks et al as applied to claims 4-18,24-25 above, and further in view of Blaschke et al (WO 01/06858),

Drantch et al do not disclose dough having the features cited in claims 20-23. Blaschke et al disclose a ready-to-use bakery dough which is preserved in the refrigerator. The dough is firm during storage but spread well during baking. The dough can have different configurations and materials as recited on page 8 lines 1-11.

It would have been obvious to one skilled in the art to make dough having different dough composite, decoration and filling as taught by Blaschke et al to make baked product having different taste, texture, flavor and look.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 25, 2005

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700